

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.550/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Mr. Muhammad Ikram, PST (BPS-12) Government Primary School
Shagai District Torghar. (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Torghar at Mansehra.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
5. The District Account Officer, District Torghar at Mansehra.
.... (Respondents)

Mr. Taimur Ali Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....27.02.2023
Date of Hearing.....15.12.2023
Date of Decision.....15.12.2023

JUDGMENT

Rashida Bano, Member (J): The instant appeals instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of the instant appeal, the respondents may kindly be directed to grant back benefits/arrears to the appellants in shape of salary for the period w.e.f 07.06.2016 to 02.07.2018 as on domicile on which his appointment order was withdrawn has been verified and found correct during the denovo enquiry proceeding. Any



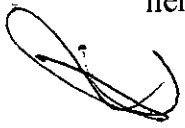
other remedy which this honorable Tribunal deems fit and proper that may also be awarded in favour of appellants.”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected service appeals which are given as under:

1. Service Appeal No. 551/2023
2. Service Appeal No. 553/2023
3. Service Appeal No. 554/2023
4. Service Appeal No. 555/2023
5. Service Appeal No. 556/2023
6. Service Appeal No. 557/2023

As in all these appeals common question of law and facts are involved.

3. Brief facts of the case are that appellants were initially appointed as PST (BPS-12) in education department in the year 2016. That on 07.09.2016, their appointment orders were withdrawn/de-notified, therefore, they filed writ petitions before the Peshawar High Court which were allowed vide judgment dated 15.05.2018, by setting aside the impugned notification dated 07.09.2016 and reinstated the appellants into service, however the respondents were left at liberty to proceed the appellants in accordance with law and rules, if they so desire. The appellants were reinstated vide notification dated 03.07.2018, however, the issue of arrears of their pay and allowances was ordered to be decided on the outcome of denovo inquiry. During the inquiry, the domicile certificate of the appellants were found genuine and notification dated 04.09.2019 and 23.10.2019 were also issued regarding regularization of service w.e.f the date of their appointment but arrears of pay and allowances were not granted. Appellants filed COCs, which were dismissed with direction to approach the proper forum. Appellants then filed departmental appeals, which were not responded to, hence, the instant service appeals.



4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard learned counsel for the appellant as well as learned District Attorney and have gone through the record and the proceedings of the case in minute particulars.

5. Learned counsel for the appellant argued that it was categorically mentioned in the reinstatement order dated 03.07.2018 that the issue of arrears of pay and allowances will be decided upon the outcome of de-novo inquiry, however the arrears were not granted to the appellants despite the fact that their domicile certificates were found genuine during the denovo inquiry. He further argued that appellants remained out of service w.e.f 07.09.2016 to 02.07.2018 for no fault on their part, therefore, they are entitled for the pay and allowances for that period. He submitted that appellants have been granted annual increments for the years 2016, 2017 & 2018, therefore, they are entitled for the salaries of the period during which they remained out of service due to the fault of respondents.

6. Conversely, learned District Attorney contended that the appellants have been treated in accordance with law and rules. He further contended that the appellants were reinstated into service in the light of Judgment of Peshawar High Court, Abbottabad Bench subject to the outcome of denovo enquiry regarding verification of their domicile certificate and after conducting the denovo enquiry by Deputy Commissioner Tor Ghar, their pays were released. He further contended that in view of the principle of no work no pay, the appellants could not claim salaries for the period during which they remained out of service. He further contended that this Tribunal has got no jurisdiction to entertain the appeal in hand as the period for which the appellants seek arrears they were not a regular employees/civil servants.

7. Perusal of record reveals that appellants were appointed as PST (BPS-12) in the year 2016 and performed their duties regularly till 06.09.2016. When vide notification dated 07.09.2016, the appointment order of the appellants were withdrawn for the reason that their domicile certificates were not verified as valid from the concerned quarter. The writ petitions filed by the appellants before the Hon'ble Peshawar High Court, Abbottabad Bench were allowed and they were reinstated in service vide notification dated 03.07.2018, wherein it is categorically mentioned that the issue of arrears of pay and allowances would be decided upon the outcome of de-novo inquiry. Domicile certificate of the appellants were found valid in de-novo inquiry and services of the appellants were regularized vide notification dated 23.10.2019. It is admitted fact that the domicile certificate of the appellants were found valid during the de-novo inquiry, therefore, the period during which appellants remained out of service w.e.f 07.09.2016 to 02.07.2018 could not be considered as a fault on the part of the appellants. August Supreme Court of Pakistan in its judgment reported as 2013 SCMR 752 has graciously observed as below:


"Once an employee is reinstated in service after his exoneration of the charges leveled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/duty because on the basis of charge sheet, he was suspended and later on dismissed. At the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended or dismissed".


8. While deriving the wisdom from the above mentioned judgment of august Supreme Court of Pakistan, we are of the view that the appellants were entitled to pay and allowances for the period during which they remained out of service, particularly when they have submitted an affidavit alongwith their appeals that they did not remain gainfully employed in any service during the period of their absence. The affidavit so submitted by the appellants have not been denied by the respondents through filing of any counter affidavit. So far as the question of limitation is concerned, the issue being one of financial benefits, therefore, the appeal is not hit by the law of limitation.

9. Now come towards the contention of learned District Attorney regarding lack of jurisdiction of this Tribunal on the ground that period for which appellants seek arrears were on contract and they were not a regular employees, therefore, instant appeal could not be entertain by this Tribunal. Record reveals that service of the appellants were regularized vide notification dated 04.09.2019 and 23.10.2019 with effect from the date of their appointment i.e 09.04.2016 and 13.04.2016. So appellants were regular civil servants from the date of their appointment, therefore, this Tribunal had jurisdiction to entertain the appeals in hand.

10. For what has been discussed above, the appeal in hand as well as connected service appeals are allowed as prayed for. Costs shall follow the event. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


- 28th Aug, 2023
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Sher Shah, Supdt for the respondents present.
 2. Written reply/comments has been submitted which is found placed on file. To come up for arguments on 15.012.2023 before D.B. P.P given to the parties.

Adnan Shah


(Kalim Arshad Khan)
Chairman

ORDER

- 15.12.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Sher Shah, Superintendent for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand as well as connected service appeals are allowed as prayed for. Costs shall follow the event. Consign.
 3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15th day of December, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)